

SERVICE DATE – DECEMBER 22, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35974 (Sub-No. 1)

UNION PACIFIC RAILROAD COMPANY—TEMPORARY TRACKAGE RIGHTS
EXEMPTION—BNSF RAILWAY COMPANY

Digest:¹ This decision authorizes the expiration of certain Board-approved rights by one carrier to operate over the lines of another carrier, even though such rights typically continue indefinitely.

Decided: December 15, 2015

By petition filed on November 3, 2015, Union Pacific Railroad Company (UP) requests that the Board partially revoke the trackage rights class exemption, 49 C.F.R. § 1180.2(d)(7), as it pertains to the trackage rights arrangement exempted in Docket No. FD 35974,² to permit those trackage rights to expire on December 31, 2018.

UP states that the temporary trackage rights agreement (Agreement) between UP and BNSF Railway Company (BNSF) exempted in Docket No. FD 35974 is intended to grant UP temporary overhead trackage rights between milepost 579.3 near Mill Creek, Okla., on BNSF's Creek Subdivision and milepost 631.0 near Joe Junction, Tex., on BNSF's Madill Subdivision to move loaded and empty unit ballast trains to be used for UP maintenance of way projects. Notice of the exemption in FD 35974 was served and published in the Federal Register on November 19, 2015 (80 Fed. Reg. 72,486). The transaction may be consummated on or after December 3, 2015, the effective date of UP's exemption.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² In that docket, on November 3, 2015, UP filed a Verified Notice of Exemption under the Board's class exemption procedures at 49 C.F.R. § 1180.2(d)(7). UP states that because the trackage rights covered by the notice of exemption are longer than one year in duration, the Board's class exemption for temporary trackage rights under 49 C.F.R. § 1180.2(d)(8) does not apply.

DISCUSSION AND CONCLUSIONS

Although UP and BNSF have expressly agreed on the duration of the proposed Agreement, trackage rights approved under the class exemption at 49 C.F.R. § 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. Occasionally, however, trackage rights exemptions have been granted for a limited time period rather than in perpetuity. See, e.g., Union Pac. R.R.—Trackage Rights Exemption—Burlington N. & Santa Fe Ry., FD 34242 (Sub-No. 1) (STB served Oct. 7, 2002).

Under 49 U.S.C. § 10502, the Board may exempt a person, class of persons, or a transaction or service, in whole or in part, when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

UP's temporary trackage rights have already been authorized under the class exemption at 49 C.F.R. § 1180.2(d)(7). Granting partial revocation in these circumstances would eliminate the need for a second pleading seeking discontinuance when the agreement expires, thereby promoting rail transportation policy goals at 49 U.S.C. §§ 10101(2), (4), (5), (7), and (15). See BNSF Ry.—Temporary Trackage Rights Exemption—Union Pac. R.R., FD 35808 (Sub-No. 1) (STB served Apr. 10, 2014). Moreover, limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted and would have no adverse impact on shippers, because the trackage rights that are the subject of the exemption are solely to allow UP to move loaded and empty unit ballast trains to be used for UP maintenance of way projects. Therefore, we will grant the petition and permit the trackage rights exempted in Docket No. FD 35974 to expire on December 31, 2018.

To provide the statutorily mandated protection to any employee adversely affected by the discontinuance of trackage rights, we will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line), 360 I.C.C. 91 (1979).

It is ordered:

1. The petition for partial revocation is granted.
2. Under 49 U.S.C. § 10502, the trackage rights described in Docket No. FD 35974 are exempted, as discussed above, to permit the trackage rights to expire on December 31, 2018, subject to the employee protective conditions set forth in Oregon Short Line.
3. Notice will be published in the Federal Register on December 22, 2015.

4. This decision is effective on January 21, 2016. Petitions to stay must be filed by January 4, 2016. Petitions for reconsideration must be filed by January 11, 2016.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Miller.